

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1059 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHHATRABHAI CHAMANBHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 27/02/97

ORAL JUDGEMENT

The accused-appellant came to be apprehended by PSI at Santrampur, near S.T. stand of that town and on search he was found to be possessing one plastic bag containing 730 grams of opium and in the pocket of his shirt another small packet containing 20 grams of opium. No doubt, this was established to be opium only on FSL examination.

2 Accepting the prosecution case therefore the learned Sessions Judge, Panchmahals at Godhra, by his judgment dated 25.09.1992 in Sessions Case No.36 of 1992 convicted the accused under section 18 of the NDPS Act and awarded RI for 10 years and fine of Rs.1 lakh and in default to undergo sentence for six months. It is this judgement dated 25.09.1992 which is under challenge before us.

3 The learned advocate, Mrs Subhadra Patel, who is appointed by this Court, has drawn our attention to the deposition of PSI D.M. Pargi, who, on receipt of information was lying in wait with two panchas to apprehend the suspect.

4 However, both the panchas have not supported the prosecution case and the matter therefore solely rests on the deposition of said PSI as well as finding given by the Forensic Science Laboratory.

5 However, we do not go that far for the purpose of this appeal. What could be seen from the deposition of said Mr Pargi, PW No.3, Exh.14, page 57, he is a PSI and the entire operation of the search has been carried out by him and in the process requirement of section 50 of the NDPS is completely lost sight of. The said PSI not being a gazetted officer, was supposed to take the suspect for the search in the presence of a gazetted officer or a magistrate. He had not done anything of the sort. The case of the accused is directly covered by the decision of the Supreme Court in the case of State of Punjab v. Balbir Singh reported in AIR 1992 SC page 1872. The appeal is therefore allowed. The order of conviction and sentence is set aside. The appellant is ordered to be set at liberty if not required in any other case. Fine if paid, is ordered to be refunded.
